

## **CHAPTER 21**

### **ADULT BUSINESS ZONING REGULATIONS**

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**Section 21-1     Definitions**

For purposes of this chapter, the following terms shall have the following definitions:

**Adult Arcade:** Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished, or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

**Adult Bookstore, Adult Novelty Store or Adult Video Store:** A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration either of the following:

- A.** Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other electronic video media which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- B.** Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as Adult Bookstore, Adult Novelty Store, or Adult Video Store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an Adult Bookstore, Adult Novelty Store, or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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**Adult Business:** An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

**Adult Cabaret:** A nightclub, bar, restaurant, or similar commercial establishment which regularly features either of the following:

- A.** Persons who appear in a state of nudity or semi-nude.
- B.** Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- C.** Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**Adult Motel:** A hotel, motel or similar commercial establishment which:

- A.** Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions.
- B.** Offers a sleeping room for rent for a period of time that is less than ten (10) hours.
- C.** Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

**Adult Motion Picture Theater:** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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**Adult Theater:** A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**Electronic Video Media:** Films, motion pictures, video cassettes, slides, digital video disks, or other similar electronic, digital, or mechanical image productions, characterized by an emphasis on the display of specified sexual activity or specified anatomical areas.

**Employee:** A person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. The term Employee does not include a person employed by another entity or business exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

**Escort:** A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**Escort Agency:** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**Establishment or Established:** Includes any of the following:

- A.** The opening or commencement of any adult business as a new business.
- B.** The conversion of an existing business, whether or not an adult business, to any adult business.
- C.** The additions of any sexually oriented business to any other existing adult business.
- D.** The relocation of any adult business.

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**Licensee:** A person in whose name a license to operate an adult business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult business.

**Nude Model Studio:** Any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by public taxation; or in a structure that includes the following:

- A.** That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing.
- B.** Where in order to participate in a class a student must enroll at least three days in advance of the class.
- C.** Where no more than one (1) nude or semi-nude model is on the premises at any one time.

**"Nude," "Nudity" or a "State Of Nudity":** The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

**Person:** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**Principal Purpose:** Any of the following:

- A.** Thirty (30%) percent or more of the business inventory or stock of merchandise for sale, rental, distribution or exhibition during any period of time.

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- B.** Thirty (30%) percent or more of the annual number of gross sales, rentals or other business transactions.
- C.** Thirty (30%) percent or more of the annual gross business revenue.

**“Semi-Nude” or in a “Semi-Nude Condition”:** The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

**Sexual Encounter Center:** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration either of the following:

- A.** Physical contact in the form of wrestling or tumbling between **persons of the opposite sex.**
- B.** Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

**Sexually Oriented Business:** See “Adult Business.”

**Specified Anatomical Areas:**

- A.** The human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- B.** Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

**Specified Criminal Activity:** Any of the following offenses:

- A.** Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure;

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indecent with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of the United States, the State of Arizona, other states or countries; for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense.
  2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.
  3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- B. The fact that a conviction is in the process of being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

**Specified Sexual Activities:** Include any of the following:

- A. Sex acts, including but not limited to, intercourse, oral copulation, masturbation, or sodomy.
- B. Excretory functions as part of or in connection with any of the activities set forth in A through B above.

**Substantial Enlargement:** means the increase in floor areas occupied by the sexually oriented business by more than twenty-five percent (25%) over the floor area, as it exists on the date this ordinance takes effect.

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**Transfer of Ownership or Control:** means and includes any of the following:

- A.** The sale, lease, or sublease of the business.
- B.** The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means.
- C.** The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Section 21-2 Classification**

Adult businesses are classified as follows:

- A.** Adult arcades.
- B.** Adult bookstores, adult novelty stores, or adult video stores.
- C.** Adult cabarets.
- D.** Adult motels.
- E.** Adult motion picture theaters.
- F.** Adult theaters.
- G.** Escort agencies.
- H.** Nude model studios.
- I.** Sexual encounter centers.

**Section 21-3 Location of Adult Businesses**

- A.** An adult business is prohibited from being established, located, operated, or licensed in any Town of Fountain Hills zoning district other than the C-3 Zoning District.



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- B.** An adult business is prohibited from being established, operating, caused to be operated, located or being licensed for business within the following:
- 1.** 2,000 feet of a church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities.
  - 2.** 2,000 feet of a public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.
  - 3.** 2,000 feet of an entertainment business that is oriented primarily towards children or family entertainment.
  - 4.** 500 feet of a separate business having an Arizona Spirituous Liquor License with any of the following classifications: Bar (Series 06), Beer and Wine Bar (Series 07), or the equivalent of such licenses.
  - 5.** 2,000 feet of another adult business.
  - 6.** 300 feet of a boundary of a residential zoning district as defined in the Fountain Hills Zoning Ordinance.
  - 7.** 500 feet of a public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation, or management of the city park and recreation authorities.

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- 8.** 300 feet of the property line of a lot devoted to a residential use as defined in the Fountain Hills Zoning Ordinance.
- C.** In addition to the civil fines that may be enforced by the Town of Fountain Hills for violations of the Zoning Ordinance under the Fountain Hills Code and Arizona law, a person commits a Class 1 misdemeanor if that person operates, establishes, causes to be operated, causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of an adult business within a zoning district other than as set forth in this Chapter and within the minimum distance requirements as set forth in Subsection B of this Section.
- D.** A person commits a Class 1 misdemeanor if that person causes or permits the operation, establishment, or maintenance of, more than one adult business in the same building, structure, or portion thereof, or the increase of floor area of any adult business in any building, structure, or portion thereof already containing two adult businesses.
- E.** For the purpose of Subsections B and G of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises where an adult business is conducted, to the nearest property line of the premises of a use listed in Subsection B. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
- F.** Any adult business lawfully operating as of the effective date of this Chapter, that is in violation of one or more of Subsections A through E of this Section shall be deemed a legal nonconforming use. The nonconforming use will be permitted to continue, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more adult businesses are within 2,000 feet of one another and otherwise in a permissible location, the adult business which was first established and continually operating at

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a particular location is the conforming use and the later established business(es) is/are nonconforming.

- G.** An adult business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the adult business license, of a use listed in Subsection B of this Section within the minimum applicable separation distance required. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.
- H.** Sexual Encounter Centers are prohibited in the Town of Fountain Hills.

**Section 21-4 Additional Regulations for Adult Motels.**

- A.** Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.
- B.** A person commits a Class 1 misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an adult license, he rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or sub-rents the same sleeping room again.
- C.** For purposes of Subsection B of this section, the terms rent or sub-rent mean the act of permitting a room to be occupied for any form of consideration.

**Section 21-5 Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms**

- A.** A person who operates or causes to be operated an adult business, other than an adult motel, which exhibits on the premises in a viewing room of at least 150 square feet of floor space, a film, electronic video media, live entertainment, or other video reproduction which depicts specified sexual activities

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or specified anatomical areas, shall comply with the following requirements:

- 1.** In addition to the application for an adult license, an application to the Town Planning and Zoning Department should be submitted and it shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. Each diagram must be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior. The Town may waive the foregoing diagram submittal requirement for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- 2.** The application to the Planning and Zoning Department shall be sworn to be true and correct by the applicant.
- 3.** No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.
- 4.** It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- 5.** The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an

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unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.

- 6.** It shall be the duty of the licensee to ensure that the view area specified in Subsection 5 remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection 1 of this Section.
- 7.** No viewing room may be occupied by more than one person at any time.
- 8.** The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level.
- 9.** It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- 10.** No licensee shall allow openings of any kind to exist between viewing rooms.
- 11.** No person shall make or attempt to make an opening of any kind between viewing rooms.
- 12.** The licensee shall, during each business day, regularly inspect the walls between the viewing rooms to determine if any openings or holes exist.
- 13.** The licensee shall cause all floor coverings in viewing rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

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- 14.** The licensee shall cause all wall surfaces and ceiling surfaces in viewing rooms to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.
- B.** A person having a duty under Subsections 1 through 14 of Subsection A above commits a Class 1 misdemeanor if he knowingly fails to fulfill that duty.

**Section 21-6 Additional Regulations for Escort Agencies**

- A.** An escort agency shall not employ any person under the age of 18 years.
- B.** A person commits a Class 1 misdemeanor if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

**Section 21-7 Additional Regulations for Nude Model Studios**

- A.** A nude model studio shall not employ any person under the age of 18 years.
- B.** A person under the age of 18 years commits a Class 1 misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio.
- C.** A person commits a Class 1 misdemeanor if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the exterior of the building.
- D.** A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**Section 21-8 Additional Regulations Concerning Public Nudity**

- A.** It shall be a Class 1 misdemeanor offense for a person who knowingly or intentionally in an adult business appears in a nude or semi-nude condition unless the person is an employee who,

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while nude or semi-nude, shall be at least four feet from any patron or customer and on a stage at least two feet from the floor.

- B.** A patron shall not place money on the person or clothing of an employee while the employee is nude or semi-nude.
- C.** It shall be a Class 1 misdemeanor offense for an adult business employee, while nude or semi-nude, to touch a customer or the clothing of a customer.

**Section 21-9 Prohibition against Children in an Adult Business**

A person commits a Class 1 misdemeanor offense if the person knowingly allows a person under the age of 18 years on the premises of an adult business.

**Section 21-10 Hours of Operation**

No adult business, except for an adult motel, may remain open at any time between the hours of 1:00 A.M. and 8:00 A.M. on weekdays and Saturdays, and 1:00 A.M. and 12:00 P.M. on Sundays.

**Section 21-11 Exemptions**

- A.** It is a defense to prosecution under Section 21-1-8 that a person appearing in a state of nudity did so in a modeling class operated by the following:
  - 1.** By a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or partly by public taxation.
  - 2.** By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

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- 3.** In a structure:
  - a.** Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.
  - b.** Where, in order to participate in a class a student must enroll at least three days in advance of the class.
  - c.** Where no more than one nude model is on the premises at any one time.

**Section 21-12 Violations and Penalties**

In addition to applicable criminal penalties under Arizona law, and the Fountain Hills Code, violations of this Adult Business Ordinance shall be subject to the provisions of the Fountain Hills Zoning Ordinance, Section 1.10: Violation and Penalty, as well as the Fountain Hills Town Code, Article 1-8: Penalty.